

1  
2  
3  
4  
5  
6  
7 IN RE: VOLKSWAGEN “CLEAN DIESEL”  
8 MARKETING, SALES PRACTICES, AND  
9 PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

10 This Order Relates To:  
11 ALL CONSUMER ACTIONS  
12 ALL RESELLER DEALERSHIP ACTIONS

**ORDER GRANTING FINAL  
APPROVAL OF THE BOSCH CLASS  
ACTION SETTLEMENT**

13 In the fall of 2015, the public learned of Volkswagen’s deliberate use of a defeat device—  
14 software designed to cheat emissions tests and deceive federal and state regulators—in nearly  
15 600,000 Volkswagen-, Porsche-, and Audi-branded turbocharged direct injection (“TDI”) diesel  
16 engine vehicles sold in the United States. Litigation quickly ensued, and those actions were  
17 consolidated and assigned to this Court as a multidistrict litigation (“MDL”). After months of  
18 intensive negotiations and with the assistance of a court-appointed settlement master, Plaintiffs  
19 and Defendants Robert Bosch GmbH and Robert Bosch, LLC (collectively, “Bosch”) reached a  
20 settlement that resolves consumer claims concerning affected 2.0- and 3.0-liter diesel TDI  
21 vehicles. (See Dkt. No. 2918.) The Court preliminarily approved the Settlement on February 16,  
22 2017. (See Dkt. No. 2920.)

23 The Settlement Class Representatives now move for final approval of the Settlement.  
24 (Dkt. No. 3086.) On May 11, 2017, the Court held a fairness hearing regarding final approval,  
25 during which the attorney for one Class Member addressed the Court. Having considered the  
26 parties’ submissions and with the benefit of oral argument, the Court GRANTS final approval of  
27 the Settlement. The Settlement is fair, reasonable, and adequate.

1

## BACKGROUND

### 2 I. Factual Allegations

3 From 2009 through 2015, Volkswagen sold Volkswagen-, Audi-, and Porsche-branded  
4 TDI “clean diesel” vehicles, which it marketed as being environmentally friendly, fuel efficient,  
5 and high performing. Unbeknownst to consumers and regulatory authorities, Volkswagen  
6 installed in these cars a software defeat device that allowed the vehicles to evade United States  
7 Environmental Protection Agency (“EPA”) and California Air Resources Board (“CARB”)  
8 emissions test procedures. Specifically, the defeat device senses whether the vehicle is  
9 undergoing testing and produces regulation-compliant results, but operates a less effective  
10 emissions control system when the vehicle is driven under normal circumstances. Only by  
11 installing the defeat device on its vehicles was Volkswagen able to obtain Certificates of  
12 Conformity from EPA and Executive Orders from CARB for its 2.0- and 3.0-liter diesel engine  
13 vehicles; in fact, these vehicles release nitrogen oxides at a factor of up to 40 times over the  
14 permitted limit. Over six years, Volkswagen sold American consumers nearly 600,000 diesel  
15 vehicles equipped with a defeat device.

16 As alleged, Bosch worked closely with Volkswagen to develop and supply the defeat  
17 device for use in Volkswagen’s vehicles. Despite having knowledge of Volkswagen’s illicit use  
18 of the defeat device, Bosch continued to work with Volkswagen and even concealed the defeat  
19 device in communications with U.S. regulators when concerns were raised about the emission  
20 control systems in certain Volkswagen vehicles. While Volkswagen has publicly admitted  
21 wrongdoing, Bosch continues to deny wrongdoing. (See Dkt. No. 2838 at 8.)

### 22 II. Procedural History

23 In January 2016, the Court appointed Elizabeth J. Cabraser of Lieff, Cabraser, Heimann &  
24 Bernstein, LLP as Lead Plaintiffs’ Counsel and Chair of the Plaintiffs’ Steering Committee  
25 (“PSC”), to which the Court also named 21 other attorneys. (Dkt. No. 1084.) On September 2,  
26 2016, the PSC filed its Amended Consolidated Consumer Class Action Complaint against 13  
27 named defendants: Volkswagen Group of America; Volkswagen AG; Audi AG; Audi of America,  
28 LLC; Porsche AG; Porsche Cars North America, Inc.; Martin Winterkorn; Mattias Müller;

1 Michael Horn; Rupert Stadler; Robert Bosch GmbH; Robert Bosch, LLC; and Volkmar Denner.  
2 (Dkt. No. 1804.) As against Bosch, the complaint asserts claims under the Racketeer Influenced  
3 and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(c)-(d), state fraud and unjust  
4 enrichment laws, and all fifty States’ consumer protection laws. The PSC also filed a Second  
5 Amended Consolidated Reseller Dealership Class Action Complaint against the same 13  
6 defendants; the complaint asserts against Bosch claims for RICO, fraud, and unjust enrichment.  
7 (Dkt. No. 1805.)

8 In January 2016, the Court appointed former Director of the Federal Bureau of  
9 Investigation Robert S. Mueller III as Settlement Master to oversee settlement negotiations  
10 between the parties. (Dkt. No. 973.) Since that time, in parallel to negotiations for the 2.0-liter  
11 and 3.0-liter Volkswagen settlements, the parties have engaged in both litigation and settlement  
12 discussions over Bosch’s involvement in the Volkswagen emissions scandal. The parties finally  
13 reached a proposed Settlement, and the Court preliminarily approved the Settlement on February  
14 16, 2017. (Dkt. No. 2920.)

15 The Notice Administrator implemented the court-approved Notice Program beginning  
16 March 6, 2017 by U.S. first class mail. (Dkt. No. 3188-2 ¶ 18.) Plaintiffs filed a motion for final  
17 approval on March 24, 2017. (Dkt. No. 3086.) By April 14, 2017, there were four timely  
18 objections and 640 opt outs. (Dkt. Nos. 3188 at 5; 3188-1 at 3-15; 2188-2 ¶¶ 43-44.)

## 19 SETTLEMENT TERMS<sup>1</sup>

20 The key provisions of the Settlement are as follows. The Settlement requires Bosch to  
21 create a non-reversionary settlement fund, called the Bosch Settlement Fund, in the amount of  
22 \$327,500,000 to compensate Class Members. (Dkt. No. 2918 ¶¶ 4.1, 10.1.)

23 The proposed Settlement Class consists of all persons and entities who were eligible for  
24 membership in the combination of classes defined in the 2.0-liter and 3.0-liter class action  
25 settlement agreements, including anyone who opted out or opts out of those agreements. (*Id.*  
26 ¶ 2.17.) The following are excluded from the Settlement Class: (a) Bosch’s officers, directors, and  
27

---

28 <sup>1</sup> A more detailed explanation of the Settlement terms can be found in the Court’s preliminary  
approval order. (See Dkt. No. 2920.)

1 employees; and Bosch’s affiliates and affiliates’ officers, directors, and employees;  
2 (b) Volkswagen; Volkswagen’s officers, directors, and employees; and Volkswagen’s affiliates  
3 and affiliates’ officers, directors, and employees; (c) any Volkswagen franchise dealer; (d) judicial  
4 officers and their immediate family members and associated court staff assigned to this case; and  
5 (e) any person or entity that timely and properly opted out of the Bosch Settlement. (*Id.*) Eligible  
6 Vehicles under the Settlement are the same eligible vehicles identified in the 2.0-liter and 3.0-liter  
7 settlement agreements. (*Id.* ¶ 2.34.) Any Volkswagen, Audi, or Porsche vehicles that were never  
8 sold in the United States or its territories are excluded from the Eligible Vehicles. (*Id.*)

9 The Bosch Settlement Fund will be distributed such that \$163,267,450 will be shared  
10 among 2.0-liter Class Members and \$113,264,400 will be shared among 3.0-liter Class Members.  
11 (Dkt. No. 2838 at 14.) The Fund will be distributed to Class Members, based on the Federal Trade  
12 Commission’s (“FTC”) allocation plan (*see* Dkt. No. 2918 ¶ 4.4), as follows:

13 An eligible owner of an Eligible Vehicle in the 2.0-liter settlement will receive \$350,  
14 except that if an eligible seller or lessee has an approved claim for the same Eligible Vehicle, the  
15 eligible owner will receive \$175. (Dkt. No. 2838 at 15.) An eligible seller in the 2.0-liter  
16 settlement with an approved claim will receive \$175. (*Id.*) An eligible lessee in the 2.0-liter  
17 settlement will receive \$200. (*Id.*)

18 An eligible owner of an Eligible Vehicle in the 3.0-liter settlement will receive \$1,500,  
19 with three exceptions: (1) if an eligible former owner of the same Eligible Vehicle has an  
20 approved claim in the 3.0-liter settlement, the \$1,500 payment will be split equally (\$750 each)  
21 between the owner and the former owner; (2) an eligible owner will also receive \$750 if an  
22 eligible former lessee of the Eligible Vehicle has an approved claim; and (3) if two former eligible  
23 owners of the Eligible Vehicle have approved claims, the \$1,500 will be split such that the eligible  
24 owner receives \$750 and each of the two former owners receives \$375. (*Id.*) An eligible lessee in  
25 the 3.0-liter settlement will receive \$1,200. (*Id.*) The Settlement Benefit Period, or the time  
26 period during which Class Members may obtain benefits under the Settlement, ends on April 30,  
27 2020. (*Id.* ¶ 2.50.)

28 At the conclusion of the Settlement Benefit Period, if any funds remain in the Bosch

1 Settlement Fund, and it is not feasible or economically reasonable to distribute such funds to Class  
2 Members, the funds will be distributed through *cy pres* payments according to a distribution plan  
3 and schedule filed by Class Counsel and approved by the Court. (*Id.* ¶ 10.2.) Any unused funds  
4 will only revert to Bosch if the Settlement is terminated or invalidated prior to the conclusion of  
5 the Settlement Benefit Period. (*Id.* ¶ 10.3.)

6 Reasonable attorneys' fees and costs for common-benefit work performed by Class  
7 Counsel, and other attorneys designated by Class Counsel, will be paid from the Bosch Settlement  
8 Fund. (*Id.* ¶ 11.1.) Bosch and Class Counsel did not discuss the amount of fees and expenses to  
9 be paid prior to agreement on the terms of the Settlement (*id.*), though with Class Counsel's  
10 request for preliminary approval of the Settlement, Class Counsel indicated that it would seek  
11 attorneys' fees of no more than 16 percent of the Bosch Settlement Fund (Dkt. No. 2838 at 16).  
12 With Class Counsel's request for final approval of the Settlement, Class Counsel moved for \$51  
13 million in attorneys' fees and \$1 million in costs and expenses, amounting to 15.6% of the Bosch  
14 Settlement Fund. (Dkt. No. 3087 at 5.) In a separate order issued today, the Court granted Class  
15 Counsel's request. (Dkt. No. 3231.)

16 In exchange for benefits under the Settlement, Class Members agree to release all Released  
17 Claims against the Released Parties. The Settlement defines Released Parties as:

18 (1) Robert Bosch GmbH, Robert Bosch LLC, and all current and  
19 former parents (direct or indirect), shareholders (direct or indirect),  
20 members (direct or indirect), subsidiaries, affiliates, joint venture  
21 partners, insurers, contractors, consultants, and auditors, and the  
22 predecessors, successors, and assigns of the foregoing (the "Bosch  
Released Entities"); and (2) all current and former officers,  
directors, members of the management or supervisory boards,  
employees, agents, advisors and attorneys of the Bosch Released  
Entities (the "Bosch Released Personnel").

23 (Dkt. No. 2918 ¶ 9.2.)

24 The Released Claims are defined as:

25 any and all claims, demands, actions, or causes of action, whether  
26 known or unknown, that they may have, purport to have, or may  
27 have hereafter against any Released Party, as defined above, that: (i)  
28 are related to any Eligible Vehicle; (ii) arise from or in any way  
relate to the 2.0-liter TDI Matter or the 3.0 Liter TDI Matter; and  
(iii) that arise from or are otherwise related to conduct by a Released  
Party that (a) predates the date of this Class Action Settlement

Agreement and (b) formed the factual basis for a claim that was made or could have been made in the Complaints. This Release applies to any and all claims, demands, actions, or causes of action of any kind or nature whatsoever, whether in law or in equity, contractual, quasi-contractual, or statutory, known or unknown, direct, indirect or consequential, liquidated or unliquidated, past, present or future, foreseen or unforeseen, developed or undeveloped, contingent or non-contingent, suspected or unsuspected, whether or not concealed or hidden, related to any Eligible Vehicle and arising from or otherwise related to conduct by a Released Party that predates the date of this Class Action Settlement Agreement as set forth above, including without limitation (1) any claims that were or could have been asserted in the Action; (2) all marketing and advertising claims related to Eligible Vehicles; (3) all claims arising out of or in any way related to emissions, emissions control equipment, electronic control units, electronic transmission units, CAN-bus-related hardware, or software programs, programing, coding, or calibration in Eligible Vehicles; (4) all claims arising out of or in any way related to a 2.0-liter TDI Matter under the 2.0-liter Class Action Settlement and a 3.0-liter TDI Matter under the 3.0-liter Class Action Settlement; and (5) any claims for fines, penalties, criminal assessments, economic damages, punitive damages, exemplary damages, statutory damages or civil penalties, liens, rescission or equitable or injunctive relief, attorneys', expert, consultant, or other litigation fees, costs, or expenses, or any other liabilities, that were or could have been asserted in any civil, criminal, administrative, or other proceeding, including arbitration[.]

(*Id.* ¶ 9.3.)

## **DISCUSSION – FINAL APPROVAL OF SETTLEMENT**

## I. Legal Standard

The Ninth Circuit maintains “a strong judicial policy” that favors class action settlements.

*Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015). Nevertheless, Federal Rule of Civil

Procedure 23(e) requires courts to approve any class action settlement. “[S]ettlement class actions present unique due process concerns for absent class members.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). As a result, “the district court has a fiduciary duty to look after the interests of those absent class members.” *Allen*, 787 F.3d at 1223 (collecting cases).

Specifically, courts must “determine whether a proposed settlement is fundamentally fair, adequate, and reasonable.” *Hanlon*, 150 F.3d at 1026; *see Fed. R. Civ. P. 23(e)(2)*. In particular, where “the parties reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003).

1 Approval of a settlement is a two-step process. Courts first “determine[] whether a  
2 proposed class action settlement deserves preliminary approval and then, after notice is given to  
3 class members, whether final approval is warranted.” *In re High-Tech Employee Antitrust Litig.*,  
4 No. 11-CV-02509-LHK, 2014 WL 3917126, at \*3 (N.D. Cal. Aug. 8, 2014). “At the fairness  
5 hearing, . . . after notice is given to putative class members, the court entertains any of their  
6 objections to (1) the treatment of the litigation as a class action and/or (2) the terms of the  
7 settlement.” *Ontiveros v. Zamora*, 303 F.R.D. 356, 363 (E.D. Cal. 2014) (citing *Diaz v. Trust*  
8 *Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989)). After the fairness hearing, the  
9 court determines whether the parties should be allowed to settle the class action pursuant to the  
10 agreed-upon terms. *See Chavez v. Lumber Liquidators, Inc.*, No. CV-09-4812 SC, 2015 WL  
11 2174168, at \*3 (N.D. Cal. May 8, 2015) (citation omitted).

## 12 **II. Final Certification of the Settlement Class**

### 13 **A. Rule 23(a) and (b) Requirements**

14 A class action is maintainable only if it meets the four Rule 23(a) prerequisites:

- 15 (1) the class is so numerous that joinder of all members is  
impracticable;
- 16 (2) there are questions of law or fact common to the class;
- 17 (3) the claims or defenses of the representative parties are typical of  
the claims or defenses of the class; and
- 18 (4) the representative parties will fairly and adequately protect the  
interests of the class.

19 Fed. R. Civ. P. 23(a). In a settlement-only certification context, the “specifications of the Rule . . .  
20 designed to protect absentees by blocking unwarranted or overbroad class definitions . . . demand  
21 undiluted, even heightened, attention[.]” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620  
22 (1997). “Such attention is of vital importance, for a court asked to certify a settlement class will  
23 lack the opportunity, present when a case is litigated, to adjust the class, informed by the  
24 proceedings as they unfold.” *Id.*

25 In addition to the Rule 23(a) prerequisites, “parties seeking class certification must show  
26 that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Amchem*, 521 U.S. at 614. Rule  
27 23(b)(3), relevant here, requires that (1) “questions of law or fact common to class members  
28 predominate over any questions affecting only individual members” and (2) “a class action is

1 superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed.  
2 R. Civ. P. 23(b)(3). The “pertinent” matters to these findings include:

3 (A) the class members’ interests in individually controlling the  
4 prosecution or defense of separate actions;  
5 (B) the extent and nature of any litigation concerning the  
6 controversy already begun by or against class members;  
7 (C) the desirability or undesirability of concentrating the litigation of  
8 the claims in the particular forum; and  
9 (D) the likely difficulties in managing a class action.

10 *Id.*

11 In its preliminary approval order, the Court carefully considered whether Plaintiffs  
12 satisfied the Rule 23(a) and (b)(3) requirements. (Dkt. No. 2920 at 9-13.) “Because the  
13 Settlement Class has not changed, the Court sees no reason to revisit the analysis of Rule 23[(a)  
14 and (b)].” *G. F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 7571789, at \*11 (N.D.  
15 Cal. Nov. 25, 2015) (internal quotation marks and citation omitted).

16 **B. Rule 23(c) Requirements**

17 “Adequate notice is critical to court approval of a class settlement under Rule 23(e).”  
18 *Hanlon*, 150 F.3d at 1025. Rule 23(c)(2)(B) requires that “[f]or any class certified under Rule  
19 23(b)(3), the court must direct to class members the best notice that is practicable under the  
20 circumstances, including individual notice to all members who can be identified through  
reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “[T]he express language and intent of Rule  
21 23(c)(2) leave no doubt that individual notice must be provided to those class members who are  
22 identifiable through reasonable effort.” *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 175 (1974).

23 **1. Implementation of the Notice Program**

24 The Court previously approved the form and content of the Class Notice and the Notice  
25 Program as set forth in Class Counsel’s motion for preliminary approval. (See Dkt. No. 2920 at  
26 18-20.) Epiq Systems Class Action and Claims Solutions (“ECA”) began to implement the Notice  
27 Program after the Court preliminarily approved the Settlement. (Dkt. No. 3188-2 ¶¶ 5-6.)

28 ECA collected mailing and email addresses for 2.0-liter and 3.0-liter Volkswagen owners  
and lessees from Volkswagen and Ankura Consulting Group, LLC, the Claims Supervisor for the  
2.0-liter and 3.0-liter Volkswagen settlements. (*Id.* ¶¶ 12-13.) From March 6 through March 15,

1 2017, ECA mailed Postcard Notices to 830,806 2.0-liter Class Members and 113,409 3.0-liter  
2 Class Members via U.S. first class mail. (*Id.* ¶ 18.) ECA used two variants of the Postcard  
3 Notice—one for 2.0-liter Class Members and the other for 3.0-liter Class Members. (*Id.* ¶ 16.)  
4 Each notice was 4.25" x 5.5" in size, featured a prominent headline, and directed the recipients to  
5 the Bosch Settlement Website<sup>2</sup> where they could access the Long Form Notice and additional  
6 information on the Settlement. (*Id.* ¶¶ 16-46.)

7 From March 6 through March 15, 2017, ECA also disseminated Email Notices to 773,994  
8 2.0-liter Class Members and 81,246 3.0-liter Class Members for whom a facially valid email  
9 address was available. (*Id.* ¶ 21.) The Email Notices contained the Postcard Notice text and  
10 included an embedded link to the Bosch Settlement Website. (*Id.* ¶¶ 21-22.) As of April 26,  
11 2017, ECA had emailed or mailed notice to 946,146 unique Settlement Class Members, with  
12 28,059 of those notices currently known to be undeliverable. This represents a 97.04% deliverable  
13 rate. (*Id.* ¶ 24.)

14 ECA also supervised a paid media notice campaign. As part of the campaign, ECA ran  
15 targeted banner notices for 45 days, with links to the Bosch Settlement Website. (*Id.* ¶¶ 27-30.)  
16 ECA also purchased sponsored search listings on the three most highly-visited internet search  
17 engines—*Google*, *Yahoo!*, and *Bing*. (*Id.* ¶ 31.) Combined banner impressions totaled 5.69  
18 million, and the search listings were displayed 16,335 times, resulting in 5,367 click-throughs to  
19 the Bosch Settlement Website. (*Id.* ¶¶ 31, 33-34.) ECA also issued a party-neutral Information  
20 Release on March 9, 2017 to approximately 5,000 general media (print and broadcast) outlets  
21 across North America and 5,400 online databases and websites. (*Id.* ¶ 34.)

22 As of April 26, 2017, there had been 138,571 unique visitors to the Bosch Settlement  
23 Website, and 12,770 calls to a toll-free phone number established for the Settlement. (*Id.* ¶¶ 39-  
24 40.)

25 **2. CAFA Compliance**

26 The Class Action Fairness Act (“CAFA”) provides that “each defendant that is

28 

---

<sup>2</sup> [www.BoschVWSettlement.com](http://www.BoschVWSettlement.com).

participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement[.]” 28 U.S.C. § 1715(b). On February 2, 2017, Stephanie J. Fiereck, of Epiq Legal Noticing, implemented the notice required by CAFA at the direction of the Bosch Defendants, mailing notice of the proposed Settlement to 57 officials, including the Attorney General of the United States, and Attorneys General of each of the 50 states, the District of Columbia, and the United States’ Territory officials. (Dkt. No. 3188-2, Ex. 1 ¶¶ 5-7.)

### 3. Adequacy of Notice

The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice “apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% “exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used.” (Dkt. No. 3188-2 ¶ 24.)

The Court did receive one objection to the Notice Program. Objector Kangas argues that the Program was deficient because the Postcard Notices sent to 2.0-liter Class Members did not apprise them that 3.0-liter Class Members would be receiving greater compensation. (Dkt. No. 3159 at 3-4.) The Postcard Notices, however, did direct Class Members to the Bosch Settlement Website, which included the relevant information on the 3.0-liter award. (See Dkt. No. 3188-2 ¶¶ 16-20.) ECA’s emails to Class Members also included a hyperlink to the Long Form Notice, which also included the 3.0-liter award amounts. (*Id.* ¶¶ 21-22.) Sending class members a summary notice, with directions for how to obtain additional information, is an accepted notice practice, and the use of that method here was reasonable. (See Azari Decl. ¶ 44, Dkt. No. 3188-2 (“In my experience, it is common and acceptable practice to tailor the short form notice to provide individual class members with the information relevant to their individual claims, rights, and remedies, so long as that notice also directs each class member to resources with more detailed information about the settlement.”).) The Court therefore overrules the objection.

\* \* \*

1 For the reasons discussed above, the Settlement Class satisfies Rules 23(a) and 23(b)(3),  
2 and the Class Notice satisfies Rule 23(c). Accordingly, the Court grants final class certification.

3 **III. Fairness, Adequacy, and Reasonableness**

4 Courts may approve a class action settlement “only after a hearing and on finding that it is  
5 fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Courts assessing the fairness of a  
6 settlement generally weigh:

7 (1) the strength of the plaintiff’s case; (2) the risk, expense,  
8 complexity, and likely duration of further litigation; (3) the risk of  
9 maintaining class action status throughout the trial; (4) the amount  
10 offered in settlement; (5) the extent of discovery completed and the  
stage of the proceedings; (6) the experience and views of counsel;  
(7) the presence of a governmental participant; and (8) the reaction  
of the class members of the proposed settlement.

11 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

12 But where, as here, the parties negotiate a settlement before a class has been certified,  
13 “courts must peruse the proposed compromise to ratify both the propriety of the certification and  
14 the fairness of the settlement.” *Staton*, 327 F.3d at 952. Pre-class certification settlements “must  
15 withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest  
16 than is ordinarily required under Rule 23(e) before securing the court’s approval as fair.” *In re*  
17 *Bluetooth Prods. Liability Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (citing *Hanlon*, 150 F.3d at  
18 1026). This heightened scrutiny “ensure[s] that class representatives and their counsel do not  
19 secure a disproportionate benefit ‘at the expense of the unnamed plaintiffs who class counsel had a  
20 duty to represent.’” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting *Hanlon*,  
21 150 F.3d at 1027). As such, courts must evaluate the settlement for evidence of collusion. *Id.*

22 Because “[c]ollusion may not always be evident on the face of a settlement, . . . courts  
23 therefore must be particularly vigilant not only for explicit collusion, but also for more subtle  
24 signs that class counsel have allowed pursuit of their own self-interests and that of certain class  
25 members to infect the negotiations.” *In re Bluetooth*, 654 F.3d at 947. Signs of subtle collusion  
26 include, but are not limited to:

27 (1) when counsel receive a disproportionate distribution of the  
28 settlement, or when the class receives no monetary distribution but  
class counsel are amply rewarded,

- (2) when the parties negotiate a “clear sailing” arrangement providing for the payment of attorneys’ fees separate and apart from class funds, which carries “the potential of enabling a defendant to pay class counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of the class”; and
- (3) when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund[.]

*Id.* (internal quotations and citations omitted).

## A. The *Churchill* Factors

## 1. Strength of Plaintiffs' Case

Settlement Class Counsel believes it has a strong case against Bosch (Dkt. No. 3086 at 21), but unlike Volkswagen, Bosch has not conceded liability for its role in the defeat-device scandal. Rather, Bosch has asserted that Volkswagen unilaterally chose to implement the defeat device (Dkt. No. 2864 at 21), and has advanced competing narratives about a number of key documents underpinning Plaintiffs' case (Dkt. No. 3086 at 20). In a pending motion to dismiss the complaint of the non-settling Volkswagen Franchise Dealers, Bosch has also made legal challenges regarding jurisdiction, standing, causation, and damages (Dkt. No. 2864).

The Court does not need to “reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute” in its review of the Settlement. *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). For “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.” *Id.* At a minimum, it is clear that Plaintiffs’ case against Bosch is not as strong as its case against Volkswagen. This factor therefore favors settlement. *See G.F. v. Contra Costa Cty.*, No. 13-cv-03667-MEJ, 2015 WL 7571789, at \*11 (N.D. Cal. Nov. 25, 2015) (“Approval of a class settlement is appropriate when plaintiffs must overcome significant barriers to make their case.”).

## 2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

The second *Churchill* factor relates to the first. Because Bosch does not concede liability and has put forward multiple factual and legal challenges to the claims against it, continued litigation would likely be risky, expensive, and time consuming. Additionally, because Class Members have (or will) receive substantial compensation through the Volkswagen settlements for

1 their economic losses associated with the defeat-device scheme, there is a risk that any potential  
2 recovery from Bosch would have been offset, partially or entirely, by the funds Class Members  
3 already received. Relatedly, even if the Class secured a judgment against Bosch, Class Members'  
4 recovery may have been reduced if Bosch prevailed on an indemnification claim against  
5 Volkswagen, as Class Members agreed as part of the Volkswagen settlements to "waive  
6 enforcement of [their] judgment against . . . Bosch . . . by the amount of the damages that  
7 [Volkswagen is] . . . held to be responsible for by way of indemnification of . . . Bosch." (Dkt.  
8 No. 1685-5 ¶ 6.) For these reasons, the second *Churchill* factor favors settlement. *See Kim v.*  
9 *Space Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at \*15 (N.D. Cal. Nov. 28, 2012)  
10 ("The substantial and immediate relief provided to the Class under the Settlement weighs heavily  
11 in favor of its approval compared to the inherent risk of continued litigation, trial, and  
12 appeal . . .").

### 13           **3.       Risk of Maintaining Class Action Status throughout Trial**

14       The potential difficulties in obtaining and maintaining class certification weighs in favor in  
15 final approval. Although there does not appear to be an issue with maintaining class certification  
16 at this point, if the parties had not settled Bosch could have opposed Plaintiffs' motion for class  
17 certification and, even if the Court certified the class, there is a risk the Court could later de-certify  
18 it. This factor favors settlement.

### 19           **4.       Amount Offered in Settlement**

20       This factor is considered "the most important variable in assessing a class settlement." *In*  
21 *re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1001 (N.D. Cal. 2015),  
22 *reconsideration denied*, No. C-13-3440 EMC, 2015 WL 4735521 (N.D. Cal. Aug. 10, 2015).  
23       Here, the Bosch Settlement establishes a non-reversionary fund of \$327.5 million, which will be  
24 distributed to class members in the 2.0-liter and 3.0-liter Volkswagen settlements pursuant to the  
25 FTC's formula. (Dkt. No. 2918 ¶¶ 4,1, 10.1.) When combined with the relief provided to Class  
26 Members by the 2.0-liter and 3.0-liter settlements—which includes buyback, trade-in, emission  
27 repair, and restitution remedies, valued conservatively at \$11.29 billion (*see* Dkt. Nos. 2102 at 19;  
28 3088 at 12)—the FTC believes the Bosch Settlement will fully compensate consumers for the

1       injuries they suffered from the defeat-device scandal. (Dkt. No. 3184-1.) The amount of the  
2       Bosch Settlement also takes into account that, as the FCC noted, “[a]lthough consumers have  
3       distinct legal claims against Volkswagen and Bosch, they did not suffer distinct injuries.” (Dkt.  
4       No. 3184 at 2-3.)

5           In evaluating the amount offered in settlement for fairness, courts consider the settlement  
6       as a “complete package taken as a whole, rather than the individual component parts[.]” *Officers*  
7       *for Justice*, 688 F.2d at 628. Here, the Bosch Settlement Fund and the 2.0-liter and 3.0-liter  
8       settlement awards achieve a great result—making Plaintiffs whole without continued litigation.  
9       This factor therefore also favors final approval.

10           **5.       Extent of Discovery Completed and the Stage of the Proceedings**

11           “In the context of class action settlements, formal discovery is not a necessary ticket to the  
12       bargaining table where the parties have sufficient information to make an informed decision about  
13       settlement.” *In re Mego*, 213 F.3d at 459 (brackets, citation, and internal quotation marks  
14       omitted). Instead, courts look for indications that “the parties carefully investigated the claims  
15       before reaching a resolution.” *Ontiveros*, 303 F.R.D. at 371.

16           Here, Class Counsel engaged in significant discovery such that they were fully informed  
17       and prepared to participate in settlement discussions. Following the filing of the Consolidated  
18       Consumer Class Action Complaint, Class Counsel served Bosch with extensive written discovery,  
19       including interrogatories, requests for production, and requests for admission. Class Counsel also  
20       reviewed and analyzed millions of pages of documents relating to Bosch. Further, on September  
21       2, 2016, Class Counsel filed the Amended Consumer Complaint, which amplified contentions  
22       about Bosch’s alleged role in the conspiracy. (See Dkt. No. 1804 at 160-80.)

23           While the parties reached the Settlement at an early phase of litigation, Class Counsel’s  
24       careful pre-filing investigation and extensive review of discovery materials indicate that they had  
25       sufficient information to make an informed decision about the Settlement. Accordingly, this  
26       factor favors Settlement approval.

27           **6.       Experience and Views of Counsel**

28           “Parties represented by competent counsel are better positioned than courts to produce a

1 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enters. Sec.*  
2 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Courts afford “great weight . . . to the recommendation of  
3 counsel, who are most closely acquainted with the facts of the underlying litigation.” *Nat’l Rural*  
4 *Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (internal  
5 quotation marks omitted).

6 Class Counsel believe it is “not at all certain that the Class could obtain a better outcome  
7 against Bosch through continued litigation, trial, and appeal.” (Dkt. No. 3086 at 20.) As the Court  
8 previously noted, Class Counsel “are qualified attorneys with extensive experience in consumer  
9 class action litigation and other complex cases,” who the Court selected after a competitive  
10 application process. (Dkt. No. 2919 at 23.) In light of Class Counsel’s considerable experience  
11 and their belief that the Settlement provides more than adequate benefits to Class Members, this  
12 factor favors final approval.

### 13 7. **Presence of Government Participant**

14 Although no government entity is a direct party to the Settlement, Class Counsel  
15 negotiated the Settlement alongside the United States, FTC, and CARB. For over three months  
16 after the Court approved the 2.0-liter settlement, the Settlement Master met with “the [PSC],  
17 Volkswagen, Robert Bosch GmbH, Robert Bosch LLC (Bosch), the Department of Justice (DOJ),  
18 the California Attorney General (CAG), and the Federal Trade Commission (FTC)” with respect  
19 to settlement negotiations related to the 3.0-liter vehicles and the claims against the Bosch parties.  
20 (Dkt. No. 3089 ¶ 4.) The FTC also was ultimately responsible for determining how to allocate the  
21 Bosch Settlement Fund and “strong[ly] supports” the Settlement. (Dkt. No. 3184 at 1, Ex. A ¶ 3.)  
22 Accordingly, the Court finds that this factor strongly favors settlement.

### 23 8. **Reactions of Class Members**

24 There are approximately 589,000 Class Members. (Dkt. No. 3188 at 5.) Many of them  
25 have taken an interest in the Settlement, as evidenced by the fact that, as of April 28, 2017, the  
26 Settlement call center had received approximately 12,770 calls and the Bosch Settlement Website  
27 had received 138,571 unique visits. (Dkt. 3188-2 ¶¶ 39-40.) Class Counsel have also logged over  
28 3,500 communications with Class Members, including by telephone, correspondence, and email.

1 (Dkt. 3188-1 ¶¶ 3-4.)

2 Of the Class, only 640 prospective class members (0.11%) have opted out, and only four  
3 Class Members objected to the Settlement.<sup>3</sup> (*Id.* ¶¶ 5-6.) Given the low opt-out and objection  
4 rates, this factor strongly favors final approval. *See Churchill*, 361 F.3d at 577 (finding no abuse  
5 of discretion where district court, among other things, reviewed a list of 500 opt outs in a class of  
6 90,000 class members); *Cruz v. Sky Chefs, Inc.*, No. C-12-02705 DMR, 2014 WL 7247065, at \*5  
7 (N.D. Cal. Dec. 19, 2014) (“A court may appropriately infer that a class action settlement is fair,  
8 adequate, and reasonable when few class members object to it.”); *Chun-Hoon*, 716 F. Supp. 2d at  
9 852 (granting final approval of settlement where 16 out of 329 class members (4.86%) requested  
10 exclusion).

11 Nonetheless, the Court recognizes that not all Class Members are entirely satisfied with the  
12 Settlement—albeit a small percentage. “[I]t is the nature of a settlement, as a highly negotiated  
13 compromise . . . that it may be unavoidable that some class members will always be happier with a  
14 given result than others.” *Allen*, 787 F.3d at 1223 (internal quotation marks omitted). The Court  
15 addressed one of those objections above in its discussion of the Notice Program; it addresses the  
16 remaining objections here.

17 **a. Objections Regarding the Allocation of Settlement Funds**

18     ○ The Allocation Formula

19 As noted above, the Settlement provides eligible owners and lessees of a 2.0-liter vehicle  
20 respectively with \$350 and \$200, and eligible owners and lessees of a 3.0-liter vehicle respectively  
21 with \$1,500 and \$1,200, subject to reductions where former owners or eligible lessees have claims  
22 for the same vehicle. (Dkt. No. 2918-1 at 9-10.) Objector Kangas argues that the allocation  
23 between 2.0-liter and 3.0-liter vehicle owners is unfair to Class Members with 2.0-liter vehicles,  
24 and Objector Weiss argues that the allocation between owners and lessees is unfair to lessees. The  
25 Court overrules these objections.

26

27

28 <sup>3</sup> A list of Class Members who have opted out of the Settlement can be found in Exhibit 1 to this  
Order.

1       A settlement allocation formula “need only have a reasonable, rational basis.” *In re*  
2 *Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL 3763382, at \*6 (N.D. Cal. Feb. 29, 2016). The  
3 Bosch Settlement formula has one. The Bosch Settlement is the third settlement secured by Class  
4 Counsel for vehicle owners and lessees impacted by the defeat-device scandal. In allocating the  
5 Fund, the FTC sought to ensure that—when the three settlements are viewed collectively—all  
6 affected owners and lessees would be fully compensated for their harm. In furtherance of this  
7 goal, the FTC allocated more funds from the Bosch Settlement to 3.0-liter vehicle owners because,  
8 unlike the 2.0-liter settlement, the 3.0-liter settlement “left some 3.0-liter owners short of full  
9 compensation.” (Dkt. No. 3184 at 3.) The FTC’s formula furthers the important goal of fully  
10 compensating all consumers impacted by the defeat-device fraud. Class Members did not suffer  
11 distinct injuries from Volkswagen and Bosch’s conduct—both of whom are alleged to have  
12 contributed to the same defeat-device fraud—and it is therefore appropriate to view the three  
13 settlements together. *See Officers for Justice*, 688 F.2d at 628 (“It is the complete package taken  
14 as a whole, rather than the individual component parts, that must be examined for overall  
15 fairness.”). The fact that 3.0-liter vehicle owners will receive more compensation than 2.0-liter  
16 vehicle owners under the Bosch Settlement does not make the Settlement unfair, unreasonable, or  
17 inadequate. *Churchill*, 361 F.3d at 575.

18       As for Objector Weiss’s contention that the allocation between owners and lessees is unfair  
19 to lessees, such a distinction in compensation exists in all three of the consumer settlements, and,  
20 as the Court noted in approving the 2.0-liter settlement, “reflects the fact that owners and lessees  
21 have different economic relationships with their vehicles.” (Dkt. No. 2102 at 35.) The allocation  
22 between owners and lessees in the Bosch Settlement Fund therefore has “a reasonable, rational  
23 basis.” *In re Cathode Ray Tube*, 2016 WL 3763382, at \*6.

24           ○       Intra-Class Conflict

25       Objector Kangas also asserts that the Settlement Fund’s allocation exposes an intra-class  
26 conflict, because the PSC (as Class Counsel) negotiated with Bosch on behalf of both the 2.0-liter  
27 and 3.0-liter Class Members.

28

1        As noted above, it was the FTC, not Class Counsel, who devised the allocation formula.  
2 (*See also* FTC Response, Dkt. No. 3184 at 1 (“[T]he FTC—and only the FTC—determine how to  
3 allocate the Bosch funds.”).) Class Counsel’s goal was instead to obtain the largest settlement  
4 fund possible for all Class Members, 2.0-liter and 3.0-liter alike. Thus, as explained by Professor  
5 Robert H. Klonoff, Professor of Law at Lewis & Clark Law School, “any theoretical conflict was  
6 eliminated because the FTC, not class counsel, was solely responsible for determining the  
7 allocation.” (Dkt. No. 3190-2 ¶ 73.)

8                    **b.        Objection Regarding the Scope of the Class Release**

9        Objector Kangas also argues that the Settlement’s class-wide release improperly releases  
10 all claims, whether or not concealed or hidden. Class action settlement agreements, however,  
11 commonly release concealed or hidden claims. *See, e.g., In re Zynga Inc. Sec. Litig.*, No. 12-cv-  
12 04007-JSC, 2015 WL 6471171, at \*4 (N.D. Cal. Oct. 27, 2015); *Wakefield v. Wells Fargo & Co.*,  
13 No. C 13-05053 LB, 2014 WL 7240339, at \*7 (N.D. Cal. Dec. 18, 2014); *Torchia v. W.W.*  
14 *Grainger, Inc.*, No 13-cv-01427 LJO (JLT) 2014 WL 3966292, at \*3 (E.D. Cal. Aug. 13, 2014).  
15 The Release also expressly excludes claims of personal injury or wrongful death. (*Id.*) Thus,  
16 Class Members who wish to litigate such claims may do so.

17                    **c.        Objection Regarding Time to Review Class Counsel’s Fee  
18 Motion**

19        Finally, Objector Booth argues that “[t]he proposed settlement required dissenters to object  
20 before class counsel filed its fee motion,” and therefore “depriv[ed] class members of information  
21 necessary to evaluate whether to object.” Objector Booth’s concern is not factually correct. Class  
22 Counsel filed their motion for attorneys’ fees simultaneously with their motion for final approval  
23 of the Settlement, on March 24, 2017. (*See* Dkt. No. 3087.) Class Members then had three weeks  
24 to review the fees request before the objection deadline of April 14, 2017. Further, as early as  
25 January 31, 2017—more than two months before the objection deadline—Class Counsel identified  
26 the maximum amount of attorneys’ fees they intended to request in their motion for preliminary  
27 approval of the Settlement. (Dkt. No. 2838.) Thus, Class Members had the information necessary  
28 to object to Class Counsel’s request for attorneys’ fees.

## B. The *Bluetooth* Factors

2        Although the *Churchill* factors favor settlement, consideration of those factors alone is  
3 insufficient. *See In re Bluetooth*, 654 F.3d at 946. Where, as here, the parties reach a settlement  
4 prior to class certification, courts must examine the settlement with “an even higher level of  
5 scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under  
6 Rule 23(e) before securing the court’s approval as fair.” *Id.* (citations omitted). “Collusion may  
7 not always be evident on the face of a settlement, and courts therefore must be particularly vigilant  
8 not only for explicit collusion, but also for more subtle signs that class counsel have allowed  
9 pursuit of their own self-interests and that of certain class members to infect the negotiations.” *Id.*  
10 at 947. Signs of subtle collusion include:

- (1) when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded;
- (2) when the parties negotiate a “clear sailing” arrangement providing for the payment of attorneys’ fees separate and apart from class funds, which carries the potential of enabling a defendant to pay class counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of the class; and
- (3) when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund.

17 *Id.* (internal quotations marks and citations omitted). The *Bluetooth* court made clear that these  
18 factors are not dispositive but merely “warning signs” or “indicia of possible implicit collusion.”  
19 *Id.* Even if all three signs are present, courts may still find that a settlement is reasonable. *See id.*  
20 at 950 (noting that the district court may find the settlement reasonable notwithstanding the  
21 presence of all three *Bluetooth* factors).

22 The Court concludes that none of the *Bluetooth* factors are present here. First, in a separate  
23 order today, the Court granted Class Counsel’s motion for \$51 million in attorneys’ fees and \$1  
24 million in costs. (Dkt. No. 3231.) This award amounted to 15.6% of the \$327.5 million  
25 Settlement Fund, which is a percentage that falls below the 25% benchmark established by the  
26 Ninth Circuit, and that is reasonable under the facts of this case. *See Bluetooth*, 654 F.3d at 942.  
27 Class Counsel will therefore not “receive a disproportionate distribution of the settlement,” nor  
28 will the class “receive[] no monetary distribution.” *Id.* at 947.

1           Second, the parties did not negotiate a “clear sailing” arrangement. Bosch and Class  
2           Counsel did not discuss the amount of fees and expenses to be paid prior to agreement on the  
3           terms of the Settlement. (Dkt. No. 2837 ¶ 11.1.) Nor did Bosch agree to an arrangement to pay  
4           attorneys’ fees separate and apart from the Settlement Fund.

5 Finally, the third *Bluetooth* factor does not apply because the parties have not “arrange[d]  
6 for fees not awarded to revert to defendants rather than be added to the class fund.” 654 F.3d at  
7 947. To the contrary, if any funds remain in Settlement Fund at the end of the Settlement Benefit  
8 Period, and it is not feasible or economically reasonable to distribute the remaining funds to Class  
9 Members, those funds will be distributed through *cy pres* payments according to a distribution  
10 plan and schedule filed by Class Counsel and approved by the Court. (Dkt. No. 2837 ¶ 10.2.)

11 An additional factor weighing against collusion here is the “presence of a neutral  
12 mediator.” *Bluetooth*, 654 F.3d at 948. The Court-appointed Settlement Master, Director Mueller,  
13 facilitated settlement negotiations between Class Counsel and Bosch. (See Dkt. No. 3089.) He  
14 states that these negotiations were “conducted at arm’s length” and involved “the frank exchange  
15 of views, spirited debate, vehement disagreement, thoughtful discussion, attention to detail, and  
16 the sharing of extensive data and analyses . . . .” (*Id.* ¶¶ 8-9.)

17        Given the absence any *Bluetooth* factor and Director Mueller's opinion, the Court  
18 concludes that the Settlement was not the product of collusion among the negotiating parties.

\* \* \*

20        In light of the foregoing analysis, the Court concludes that final approval is appropriate.  
21        The number of objections is small, and their substance does not call into doubt the Settlement's  
22        fairness. The *Churchill* factors support final approval, and the *Bluetooth* factors do not suggest  
23        collusion. Accordingly, even under heightened scrutiny, the Court concludes the Settlement is  
24        fair, adequate, and reasonable.

## **DISCUSSION – ALL WRITS ACT**

26 The All Writs Act authorizes district courts to “issue all writs necessary or appropriate in  
27 aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C.  
28 § 1651(a). “The power conferred by the [All Writs] Act extends, under appropriate circumstances,

1 to persons who, though not parties to the original action or engaged in wrongdoing, are in a  
2 position to frustrate the implementation of a court order or the proper administration of justice, [ ]  
3 and encompasses even those who have not taken any affirmative action to hinder justice.” *United*  
4 *States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977) (internal citations omitted). However, the  
5 authority granted by the All Writs Act, though broad, is not unlimited. *Negrete v. Allianz Life Ins.*  
6 *Co. of N. Am.*, 523 F.3d 1091, 1098 (9th Cir. 2008). Indeed, the Anti-Injunction Act limits the  
7 district court’s ability to enjoin state proceedings “except as expressly authorized by Act of  
8 Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.”  
9 28 U.S.C. § 2283. “Although comity requires federal courts to exercise extreme caution in  
10 interfering with state litigation, federal courts have the power to do so when their jurisdiction is  
11 threatened.” *Hanlon*, 150 F.3d at 1025; *see Keith v. Volpe*, 118 F.3d 1386, 1390 (9th Cir. 1997)  
12 (“[T]he All Writs Act, 28 U.S.C. § 1651, empowers the federal courts to enjoin state proceedings  
13 that interfere, derogate, or conflict with federal judgments, orders, or settlements.”).

14 A stay of all state court actions relating to the Released Claims is necessary to preserve the  
15 Court’s jurisdiction. First, Class Members have been given an opportunity to opt out of the  
16 Settlement. *See Jacobs v. CSAA Inter-Ins.*, No. C 07-00362 MHP, 2009 WL 1201996, at \*2 (N.D.  
17 Cal. May 1, 2009) (“A district court may enjoin named and absent members who have been given  
18 the opportunity to opt out of a class from prosecuting separate class actions in state court.”)  
19 (citation omitted). Second, a state court’s disposition of claims similar to or overlapping the  
20 Released Claims would implicate the same legal and evidentiary issues; thus, such action would  
21 threaten the Court’s jurisdiction and hinder its ability to decide the case. *See id.* at \*3 (“A  
22 preliminary injunction is appropriate to preserve jurisdiction because there is a sufficient overlap  
23 of claims between the federal and state class actions, such that the same legal and evidentiary  
24 issues will be implicated in each case.”); *In re Jamster Mktg. Litig.*, No. 05-CV-0819JM(CAB),  
25 2008 WL 4482307, at \*6 (S.D. Cal. Sept. 29, 2008) (“Any litigant may be enjoined from  
26 proceeding with a state court action where it is ‘necessary to prevent a state court from so  
27 interfering with a federal court’s consideration or disposition of a case as to seriously impair the  
28 federal court’s flexibility and authority to decide the case.’”) (citation omitted). Accordingly, the

1 Court enjoins Class Members who have not opted out from participating in any state court  
2 litigation relating to the Released Claims. This injunction, however, does not prevent Class  
3 Members from dismissing or staying their Released Claims.

## 4 CONCLUSION

5 For the foregoing reasons, the Court ORDERS as follow:

- 6 1. Plaintiffs' motion for final approval of the Settlement is GRANTED. The  
7 Settlement is fair, adequate, and reasonable and is in the best interest of Class  
8 Members. Benefits under the Settlement shall immediately be made available to  
9 Class Members.
- 10 2. The Court CONFIRMS the appointment of Lead Plaintiffs' Counsel and the 21  
11 members of the PSC listed in Pretrial Order No. 7 (Dkt. No. 1084) as Settlement  
12 Class Counsel.
- 13 3. The Court CONFIRMS the appointment of the Settlement Class Representatives  
14 listed in Exhibit 1 to Plaintiffs' motion for preliminary approval. (Dkt. No 2918-1.)
- 15 4. The Court CONFIRMS the appointment of Epiq Systems, Inc. as the Claims  
16 Administrator and Notice Administrator. Epiq, including its subcontractors, and  
17 the directors, officers, employees, agents, counsel, affiliates and advisors, shall not  
18 be liable for its good-faith compliance with its duties and responsibilities as Claims  
19 Administrator and Notice Administrator under the Settlement, this Order, all prior  
20 orders, or any further settlement-related orders or consent decrees, except upon a  
21 finding by this Court that it acted or failed to act as a result of malfeasance, bad  
22 faith, gross negligence, or in reckless disregard of its duties.
- 23 5. The Court APPOINTS Citibank Private Bank to serve as the Escrow Agent.
- 24 7. The Court DISMISSES WITH PREJUDICE the following without costs to any  
25 party:
  - 26 a. All claims as between the Settlement Class and all its Members who have  
27 not timely and properly excluded themselves, on the one hand, and any  
28 Released Party or Parties, other than as specified in this Order and in the

1 Settlement.

2 b. All claims pertaining to Eligible Vehicles, as between a Settlement Class

3 Member who is not an opt out or otherwise excluded, and any Released

4 Party or Parties, in related lawsuits pending in the MDL centralized in this

5 Court by the Judicial Panel on Multidistrict Litigation on December 8,

6 2015, *see In re Volkswagen “Clean Diesel” Mktg., Sales Practices, &*

7 *Prods. Liab. Litig.*, 148 F. Supp. 3d 1367 (J.P.M.L. 2015).

8 c. All related lawsuits pending in this MDL containing only claims between a

9 Settlement Class Member who is not an opt out or otherwise excluded, and

10 against any Related Party or Parties, and pertaining to Eligible Vehicles.

11 8. Class Members who have not properly opted out and any person purportedly acting

12 on behalf of any Class Member(s) are ENJOINED from commencing, filing,

13 initiating, instituting, pursuing, maintaining, enforcing or prosecuting, either

14 directly or indirectly, any Released Claims in any judicial, administrative,

15 regulatory, arbitral or other proceeding, in any jurisdiction or forum, against any of

16 the Released Parties. Nothing herein shall prevent any Class Member, or any

17 person actually or purportedly acting on behalf of any Class Member(s), from

18 taking any actions to dismiss his, her, or its Released Claims.

19 9. Only those persons or entities who timely submitted valid requests to opt out of the

20 Settlement Class are not bound by this Order, and any such excluded persons or

21 entities are not entitled to any recovery from the Settlement. A list of those persons

22 or entities can be found in Exhibit 1 to this Order.

23 10. Persons and entities that are determined by the Claims Administrator or the Court

24 to be excluded from the Class, because his/her/its vehicle is not an “Eligible

25 Vehicle,” or for any other reason, are not bound by the Final Order and Judgment,

26 and are not entitled to any recovery from the Settlement.

27 11. The Court retains the exclusive jurisdiction to enforce, administer, and ensure

28 compliance with all terms of the Settlement in accordance with the Settlement and

1 this Order.

## 2 || IT IS SO ORDERED.

3 Dated: May 17, 2017



CHARLES R. BREYER  
United States District Judge